

DEPARTMENT OF THE ATTORNEY GENERAL

News Release

NEIL ABERCROMBIE
GOVERNOR

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News Release 2012-04

The Department of the Attorney General Files Answers to Same-Sex Marriage Lawsuit

HONOLULU - Attorney General David M. Louie announced today that Governor Neil Abercrombie and Director of the State Department of Health Loretta Fuddy, have filed separate answers, as the two defendants named in their official capacities, in the First Amended Complaint in Jackson v. Abercrombie, the United States District Court lawsuit which challenges Hawaii's ban on same sex marriage.

Governor Abercrombie has acknowledged many of the complaint's allegations, including the denial of federal constitutional rights caused by the state's existing marriage law. Director Fuddy, however, as the director of the department charged with administering the law, has denied many of the complaint's allegations. As such, the Department of Health will continue to enforce the law, and will vigorously defend it. Both defendants' answers are attached to this press release.

The Complaint

The complaint alleges that on November 18, 2011, plaintiffs Natasha Jackson and Janin Kleid were denied a marriage license by the Department of Health because they are both women. The complaint also alleges that plaintiff Gary Bradley and his partner were the first male couple to obtain a civil union in Hawaii, but chose not to apply for a marriage license because it would be "futile" to do so under state law.

All three plaintiffs allege that the denial of a marriage license to them by the State, pursuant to section 572-1 of the Hawaii Revised Statutes and article I, section 23 of the Hawaii Constitution, violates their rights to Due Process and Equal Protection under state law, guaranteed them by the Fourteenth Amendment of the United States Constitution.

Governor Abercrombie's Position

Governor Abercrombie, in choosing not to defend those portions of the complaint alleging equal protection and due process violations under the United States Constitution, issued the following statement: **“Under current law, a heterosexual couple can choose to enter into a marriage or a civil union. A same-sex couple, however, may *only* elect a civil union. My obligation as Governor is to support equality under law. This is inequality, and I will not defend it.”**

In his answer to the complaint, Governor Abercrombie has specifically admitted several of the plaintiffs' allegations:

- To the extent that state law allows opposite sex couples, but not same sex couples, to get married, it violates the Due Process Clause and Equal Protection Clause of the United States Constitution.
- State law, in denying all opposite sex couples the ability to get married, violates the Due Process Clause of the United States Constitution because the right to marry is a fundamental right, and there is no legitimate reason to deny otherwise qualified couples the ability to marry simply because they are of the same sex.
- Allowing opposite sex couples but not same sex couples to get married violates the Equal Protection Clause of the United States Constitution. By denying all same sex couples the ability to marry, state law discriminates on the basis of sexual orientation, and there are no compelling, substantial, or even rational bases for such discrimination.

Governor Abercrombie is defending against all of the allegations in the complaint that he has not admitted in his answer. This means he is defending against certain allegations, including defending the state against any civil rights liability under chapter 42, section 1983 of the United States Code. The Governor is also defending the state against any money damages claims.

Director Fuddy's Position

Director Fuddy, after consulting with the Governor, has chosen to defend against the complaint. She issued the following statement: **“The Department of Health is charged with implementing the law as passed by the Legislature. Absent any ruling to the contrary by competent judicial authority regarding constitutionality, the law will be enforced. Because I am being sued for administering the law, I will also defend it.”**

In her answer to the complaint, Director Fuddy specifically:

- Admits that she has been sued in her capacity as the Director of the Department of Health. The authority, responsibilities, and duties of that office are as stated in Hawaii law.
- Admits that Bradley and his male partner cannot be issued a marriage license under existing Hawai'i law.
- Denies that plaintiffs may have their relationship recognized as a marriage by the state.

The Attorney General's Legal Ability To Represent Multiple Parties

The Attorney General has assigned separate teams of attorneys to represent the Governor and the Director of Health, under well-established Hawaii Supreme Court precedent.

In State v. Klattenhoff (1990) and Chun v. Board of Trustees of Employees' Retirement System of State of Hawaii (1998), the Hawaii Supreme Court held that the Department of the Attorney General may undertake concurrent representation of multiple parties, which might otherwise constitute a conflict of interest under Rule 1.7 of the Hawaii Code of Professional Conduct, the rules governing lawyers. In so doing, however, the Department must erect appropriate firewalls between the competing attorneys, and take steps to ensure that no prejudice is suffered by the clients.

In this case, both the Governor and the Director are being represented by separate teams of attorneys general, and appropriate protections have been put in place to ensure that both clients are being vigorously, and separately, represented.

Attach.

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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at 11 o'clock and 45 min. AM.
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

NATASHA N. JACKSON, JANIN
KLEID, and GARY BRADLEY,

Plaintiffs,

vs.

NEIL S. ABERCROMBIE, Governor,
State of Hawai'i, and LORETTA J.
FUDDY, Director of Health, State of
Hawai'i,

Defendants.

CIVIL NO. CV11-00734 ACK/KSC

(CONSTITUTIONALITY OF
STATE STATUTE)

DEFENDANT NEIL S.
ABERCROMBIE'S ANSWER TO
FIRST AMENDED COMPLAINT;
CERTIFICATE OF SERVICE

**DEFENDANT NEIL S. ABERCROMBIE'S ANSWER TO FIRST
AMENDED COMPLAINT**

Defendant NEIL S. ABERCROMBIE, in his official capacity as Governor of the State of Hawai'i, answers Plaintiffs' First Amended Complaint filed January 27, 2012.

Defendant ABERCROMBIE admits that to the extent that HRS § 572-1 allows opposite sex couples, but not same sex couples, to get married, it violates the Due Process Clause and Equal Protection Clause of the United States Constitution. In all other respects, Defendant ABERCROMBIE denies that HRS § 572-1 is unconstitutional under the United States Constitution.

Defendant ABERCROMBIE admits that HRS § 572-1, in denying all opposite sex couples the ability to get married, violates the Due Process Clause of the United States Constitution because the right to marry is a fundamental right, and there is no legitimate reason to deny otherwise qualified couples the ability to marry simply because they are of the same sex.

Defendant ABERCROMBIE also admits that HRS § 572-1, by allowing opposite sex couples, but not same sex couples, to get married violates the Equal Protection Clause of the United States Constitution. By denying all same sex couples the ability to marry, HRS § 572-1 discriminates on the basis of sexual orientation, and this discrimination, at least in the context of marriage, must be

subject to heightened scrutiny. There are no compelling, substantial, or even rational bases for such discrimination.

Defendant ABERCROMBIE asserts Article I, Section 23, of the Constitution of the State of Hawai‘i merely provides that under the Hawai‘i State Constitution, and only under the Hawai‘i State Constitution, the Legislature has the power to reserve marriage to opposite sex couples. With that construction, Defendant ABERCROMBIE denies that Article I, Section 23, of the Hawai‘i State Constitution violates any provision of the United States Constitution. Although the Legislature’s decision to restrict marriage to opposite sex couples as stated in HRS § 572-1 violates the United States Constitution, that decision and HRS § 572-1 do not and cannot violate the Constitution of the State of Hawai‘i, given Article I, Section 23.

Defendant ABERCROMBIE takes the above-stated positions consistent with his oath of office to defend the Constitution of the United States and the Constitution of the State of Hawai‘i.

RESPONSE TO ALLEGATIONS OF COMPLAINT

Defendant ABERCROMBIE responds to the allegations of the Complaint in correspondingly numbered paragraphs as follows:

1. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 1, and therefore denies the same.

2. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 2, and therefore denies the same.

3. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 3, and therefore denies the same.

4. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 4, and therefore denies the same.

5. Defendant ABERCROMBIE admits the allegations of paragraph 5.

6. Defendant ABERCROMBIE admits that Defendant FUDDY, who is sued in her capacity as the Director of the Department of Health, has the authority, responsibilities, and duties set forth in HRS §§ 26-13 and 572-5. Defendant ABERCROMBIE submits that these statutory provisions speak for themselves, and asserts that the remaining allegations as to the scope, applicability, and effect of these provisions are mere characterizations and statements of opinion, and therefore denies the same. Defendant ABERCROMBIE is without sufficient

information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 6, and therefore denies the same.

7. With respect to the allegations of paragraph 7, Defendant ABERCROMBIE admits HRS § 572-1, to the extent it allows opposite sex couples, but not same sex couples, to get married, violates the Due Process and Equal Protection Clauses of the United States Constitution. Defendant ABERCROMBIE denies the allegations in all other respects.

8. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 8, and therefore denies the same.

9. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 9, and therefore denies the same.

10. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 10, and therefore denies the same.

11. With respect to the allegations of paragraph 11, Defendant ABERCROMBIE admits HRS § 572-1, to the extent it allows opposite sex couples, but not same sex couples, to get married, violates the Due Process and

Equal Protection Clauses of the United States Constitution. Defendant ABERCROMBIE denies the allegations in all other respects.

12. Except for the jurisdictional defenses that Defendant ABERCROMBIE sets forth in this Answer, Defendant ABERCROMBIE admits that this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

13. Defendant ABERCROMBIE admits that if this Court has jurisdiction over this matter, venue is proper pursuant to 28 U.S.C. § 1391.

14. Defendant ABERCROMBIE admits that people who are lesbian or gay make up a relatively powerless minority, both in Hawai‘i and the United States. Defendant ABERCROMBIE submits that Plaintiffs’ characterization of lesbians and gays as “unpopular” is a statement of opinion that is neither a statement of fact or law, and therefore neither admits nor denies the same. Defendant ABERCROMBIE admits that people who are lesbian or gay have been and remain subject to invidious discrimination by some private actors. Defendant ABERCROMBIE admits that same sex couples have been denied the right to marry, a right enjoyed by opposite sex couples.

15. Defendant ABERCROMBIE admits that for over twenty years, some lesbian and gay couples have fought in State and federal courts for the right to marry.

16. Defendant ABERCROMBIE neither admits nor denies the allegation of paragraph 16 because it is a statement of opinion that is neither a statement of fact nor law.

17. With respect to the allegations of paragraph 17, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 17, and therefore denies the same.

18. With respect to the allegations of paragraph 18, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 18, and therefore denies the same.

19. With respect to the allegations of paragraph 19, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 19, and therefore denies the same.

20. With respect to the allegations of paragraph 20, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself.

Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 20, and therefore denies the same.

21. With respect to the allegations of paragraph 21, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 21, and therefore denies the same.

22. With respect to the allegations of paragraph 22, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 22, and therefore denies the same.

23. With respect to the allegations of paragraph 23, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 23, and therefore denies the same.

24. With respect to the allegations of paragraph 24, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself.

Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 24, and therefore denies the same.

25. With respect to the allegations of paragraph 25, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 25, and therefore denies the same.

26. With respect to the allegations of paragraph 26, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 26, and therefore denies the same.

27. With respect to the allegations of paragraph 27, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 27, and therefore denies the same.

28. With respect to the allegations of paragraph 28, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself.

Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 28, and therefore denies the same.

29. With respect to the allegations of paragraph 29, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 29, and therefore denies the same.

30. Defendant ABERCROMBIE neither admits nor denies the allegations of paragraph 30 because they are statements of opinion that are neither statements of fact nor law.

31. Defendant ABERCROMBIE neither admits nor denies the allegation contained within the first sentence of paragraph 31 because it is a statement of opinion that is neither a statement of fact nor law. With respect to the remaining allegations contained in paragraph 31, Defendant ABERCROMBIE submits that Hawai'i law, and the legislative and constitutional record, speak for themselves. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 31, and therefore denies the same.

32. Defendant ABERCROMBIE admits the allegations set forth in paragraph 32.

33. With respect to the allegations of paragraph 33, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 33, and therefore denies the same.

34. Defendant ABERCROMBIE neither admits nor denies the allegations of paragraph 34 because they are statements of opinion that are neither statements of fact nor law.

35. Defendant ABERCROMBIE admits the allegations of paragraph 35, to the extent that, post-Baehr v. Miike, some jurisdictions have recognized the right of same sex couples to marry.

36. With respect to the allegations of paragraph 36, Defendant ABERCROMBIE submits that the laws of the Netherlands, Argentina, Belgium, Canada, Iceland, Norway, Portugal, Spain, South Africa, and Sweden speak for themselves. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 36, and therefore denies the same.

37. With respect to the allegations of paragraph 37, Defendant ABERCROMBIE submits that the laws of Mexico City, the United States, Israel, Aruba, Curacao, and Sint Maarten speak for themselves. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 37, and therefore denies the same.

38. With respect to the allegations of paragraph 38, Defendant ABERCROMBIE submits that the laws of Massachusetts, Iowa, New Hampshire, Vermont, the District of Columbia, Connecticut, New York, and California speak for themselves. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 38, and therefore denies the same.

39. With respect to the allegations of paragraph 39, Defendant ABERCROMBIE submits that the litigation records of Massachusetts, Iowa, Connecticut, and California speak for themselves. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 39, and therefore denies the same.

40. With respect to the allegations of paragraph 40, Defendant ABERCROMBIE submits that the Goodridge v. Department of Public Health case speaks for itself. Defendant ABERCROMBIE is without sufficient information or

knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 40, and therefore denies the same.

41. With respect to the allegations of paragraph 41, Defendant ABERCROMBIE submits that the Kerrigan v. Commissioner of Public Health case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 41, and therefore denies the same.

42. With respect to the allegations of paragraph 42, Defendant ABERCROMBIE submits that the Kerrigan v. Commissioner of Public Health case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 42, and therefore denies the same.

43. With respect to the allegations of paragraph 43, Defendant ABERCROMBIE submits that the Kerrigan v. Commissioner of Public Health case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 43, and therefore denies the same.

44. With respect to the allegations of paragraph 44, Defendant ABERCROMBIE submits that the Varnum v. Brien case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to

form a belief as to the truth or falsity of the remaining allegations of paragraph 44, and therefore denies the same.

45. With respect to the allegations of paragraph 45, Defendant ABERCROMBIE submits that the Varnum v. Brien case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 45, and therefore denies the same.

46. With respect to the allegations of paragraph 46, Defendant ABERCROMBIE submits that the Varnum v. Brien case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 46, and therefore denies the same.

47. With respect to the allegations of paragraph 47, Defendant ABERCROMBIE submits that the In re Marriage Cases case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 47, and therefore denies the same.

48. With respect to the allegations of paragraph 48, Defendant ABERCROMBIE submits that the law of California and the constitutional record speak for themselves. Defendant ABERCROMBIE is without sufficient

information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 48, and therefore denies the same.

49. With respect to the allegations of paragraph 49, Defendant ABERCROMBIE submits that the Perry v. Brown case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 49, and therefore denies the same.

50. With respect to the allegations of paragraph 50, Defendant ABERCROMBIE submits that the Perry v. Brown case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 50, and therefore denies the same.

51. With respect to the allegations of paragraph 51, Defendant ABERCROMBIE submits that the Perry v. Brown case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 51, and therefore denies the same.

52. With respect to the allegations of paragraph 52, Defendant ABERCROMBIE submits that the Perry v. Brown case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to

form a belief as to the truth or falsity of the remaining allegations of paragraph 52, and therefore denies the same.

53. With respect to the allegations of paragraph 53, Defendant ABERCROMBIE submits that the Perry v. Brown case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 53, and therefore denies the same.

54. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 54, and therefore denies the same.

55. Defendant ABERCROMBIE neither admits nor denies the allegations of paragraph 55 because they are statements of opinion that are neither statements of fact nor law.

56. With respect to the allegations of paragraph 56, Defendant ABERCROMBIE submits that the legislative record and history regarding civil unions speak for themselves. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 56, and therefore denies the same.

57. Defendant ABERCROMBIE neither admits nor denies the allegations of paragraph 57 because they are statements of opinion that are neither statements of fact nor law.

58. Defendant ABERCROMBIE admits that a law that grants opposite sex couples the right to marry, but denies that same right to similarly situated same sex couples, deprives same sex couples who wish to marry of a fundamental right. However, Defendant ABERCROMBIE neither admits nor denies the remaining allegations of paragraph 58 because they are statements of opinion that are neither statements of fact nor law.

59. With respect to the allegations of paragraph 59, Defendant ABERCROMBIE submits that the Baehr v. Miike case speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 59, and therefore denies the same.

60. Defendant ABERCROMBIE admits that to the extent that HRS § 572-1 allows opposite sex couples, but not same sex couples, to get married, it violates the Due Process Clause and Equal Protection Clause of the United States Constitution. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 60, and therefore denies the same.

61. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 61, and therefore denies the same.

62. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 62, and therefore denies the same.

63. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 63, and therefore denies the same.

64. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 64, and therefore denies the same.

65. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 65, and therefore denies the same.

66. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 66, and therefore denies the same.

67. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 67, and therefore denies the same.

68. Defendant ABERCROMBIE admits that to the extent that HRS § 572-1 allows opposite sex couples, but not same sex couples, to get married, it violates the Due Process Clause and Equal Protection Clause of the United States Constitution. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations regarding deprivation of benefits under federal law and private contracts, and therefore denies the same. Defendant ABERCROMBIE neither admits nor denies the remaining allegations of paragraph 68 because they are statements of opinion that are neither statements of fact nor law.

69. With respect to the allegations of paragraph 69, Defendant ABERCROMBIE admits that a law that allows opposite sex couples, but not similarly situated same sex couples, the right to marry does not serve any legitimate rational purpose of the State. Defendant ABERCROMBIE denies the allegations in all other respects.

70. With respect to the allegations of paragraph 70, Defendant ABERCROMBIE submits that Hawaii's civil unions law speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to

form a belief as to the truth or falsity of the remaining allegations of paragraph 70, and therefore denies the same.

71. Defendant ABERCROMBIE admits the allegations of paragraph 71.

72. Defendant ABERCROMBIE neither admits nor denies the allegations of paragraph 72 because they are statements of opinion which are neither statements of fact nor law.

73. Defendant ABERCROMBIE admits that a State policy underlying the civil union law is to provide same sex civil union couples the same legal rights that are presently held by similarly situated opposite sex married couples. Defendant ABERCROMBIE also admits that denying same sex couples the right to marry, while allowing similarly situated opposite sex couples to either marry or enter into a civil union, does not have a legitimate rational purpose, and is unconstitutional. However, Defendant ABERCROMBIE neither admits nor denies the remaining allegations of paragraph 73 because they are statements of opinion that are neither statements of fact nor law.

74. Defendant ABERCROMBIE neither admits nor denies the allegations of paragraph 74 because they are statements of opinion that are neither statements of fact nor law.

75. Defendant ABERCROMBIE neither admits nor denies the allegations of paragraph 75 because they are statements of opinion that are neither statements of fact nor law.

76. Defendant ABERCROMBIE neither admits nor denies the allegations of paragraph 76 because they are statements of opinion that are neither statements of fact nor law.

77. With respect to the allegations of paragraph 77, Defendant ABERCROMBIE submits that the Kerrigan and Perry cases speak for themselves. Defendant ABERCROMBIE neither admits nor denies the remaining allegations of paragraph 77 because they are statements of opinion that are neither statements of fact nor law.

78. Defendant ABERCROMBIE neither admits nor denies the allegations of paragraph 78 because they are statements of opinion that are neither statements of fact nor law.

79. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 79, and therefore denies the same.

80. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 80, and therefore denies the same.

81. Defendant ABERCROMBIE denies the allegations of the first sentence in paragraph 81. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of the second sentence in paragraph 81, and therefore denies the same.

82. With respect to the allegations of paragraph 82, Defendant ABERCROMBIE submits that State and federal law speak for themselves. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 82, and therefore denies the same.

83. With respect to the allegations of paragraph 83, Defendant ABERCROMBIE submits that federal law speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 83, and therefore denies the same.

84. With respect to the allegations of paragraph 84, Defendant ABERCROMBIE submits that the federal law speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 84, and therefore denies the same.

85. With respect to the allegations of paragraph 85, Defendant ABERCROMBIE submits that Attorney General Holder's letter speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 85, and therefore denies the same.

86. With respect to the allegations of paragraph 86, Defendant ABERCROMBIE submits that the U.S. Department of Justice's letter speaks for itself, and Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations, and therefore denies the same. As to the last sentence in paragraph 86, Defendant ABERCROMBIE submits that the two cases speak for themselves, and Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations, and therefore denies the same.

87. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 87, and therefore denies the same.

88. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 88, and therefore denies the same.

89. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of paragraph 89, and therefore denies the same.

90. With respect to the allegations of paragraph 90, Defendant ABERCROMBIE submits that Article III, Section 1 of the Hawai'i Constitution speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 90, and therefore denies the same.

91. With respect to the allegations of paragraph 91, Defendant ABERCROMBIE submits that Article VI, Section 2 of the U.S. Constitution speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 91, and therefore denies the same.

92. With respect to the allegations of paragraph 92, Defendant ABERCROMBIE submits that Section 1 of the Fourteenth Amendment to the U.S. Constitution speaks for itself. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 92, and therefore denies the same.

93. Defendant ABERCROMBIE admits the allegations of paragraph 93.

94. With respect to the allegations of paragraph 94, Defendant ABERCROMBIE hereby incorporates his responses to paragraphs 1 through 93 above.

95. With respect to the allegations of paragraph 95, Defendant ABERCROMBIE admits that marriage is a fundamental right. Defendant ABERCROMBIE submits that the decisions of the Hawai'i Supreme Court and the United States Supreme Court speak for themselves, and denies any allegations that may inaccurately characterize those decisions.

96. With respect to the allegations of paragraph 96, Defendant ABERCROMBIE admits that if HRS § 572-1 denies Plaintiffs the right to marry the same sex person of their choice, it burdens their right to marry in Hawai'i. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as the truth or falsity of the remaining allegations contained in the second sentence of paragraph 96 of the Complaint, and therefore denies the same. Defendant ABERCROMBIE denies the allegations in all other respects.

97. With respect to the allegations of paragraph 97, Defendant ABERCROMBIE admits that the State of Hawai'i does not have a rational purpose, or a substantial or compelling reason, for denying same sex couples the right to marry, when similarly situated opposite sex couples are given the right to marry. Defendant ABERCROMBIE is without sufficient information or

knowledge to form a belief as the truth or falsity of the remaining allegations of paragraph 97, and therefore denies the same.

98. Defendant ABERCROMBIE neither admits nor denies the allegations of paragraph 98 because they are statements of opinion that are neither statements of fact nor law.

99. With respect to the allegations of paragraph 99, Defendant ABERCROMBIE admits that HRS § 572-1, to the extent it allows opposite sex couples, but not same sex couples, to get married, violates the Due Process Clause of the United States Constitution, and is thus unconstitutional. Given Defendant ABERCROMBIE's construction of Article I, Section 23, of the Constitution of the State of Hawai'i as merely providing that under the Hawai'i State Constitution, and only under the Hawai'i State Constitution, the Legislature has the power to reserve marriage to opposite sex couples, Defendant ABERCROMBIE denies that Article I, Section 23, violates any provision of the United States Constitution. Defendant ABERCROMBIE denies the allegations in all other respects.

100. With respect to the allegations of paragraph 100, Defendant ABERCROMBIE hereby incorporates his answers to paragraphs 1 through 99 above.

101. With respect to the allegations of paragraph 101, Defendant ABERCROMBIE admits that HRS § 572-1 permits a man and a woman to marry,

but does not permit two men or two women to marry. Defendant ABERCROMBIE denies the allegations in all other respects.

102. With respect to the allegations of paragraph 102, Defendant ABERCROMBIE admits that HRS § 572-1 may have the effect of proscribing marriage on the basis of sexual orientation. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as the truth or falsity of the remaining allegations of paragraph 102, and therefore denies the same.

103. With respect to the allegations contained in the first sentence of paragraph 103, Defendant ABERCROMBIE admits that the State of Hawai‘i does not have a legitimate rational purpose, or a substantial or compelling reason, for denying same sex couples the right to marry, when similarly situated opposite sex couples are allowed to marry. In all other respects, Defendant ABERCROMBIE denies the allegations contained in the first sentence of paragraph 103 of the Complaint. Defendant ABERCROMBIE is without sufficient information or knowledge to form a belief as the truth or falsity of the allegations contained in the second sentence of paragraph 103, and therefore denies the same.

104. With respect to the allegations of paragraph 104, Defendant ABERCROMBIE admits that HRS § 572-1, to the extent it allows opposite sex couples, but not same sex couples, to get married, violates the Equal Protection Clause of the United States Constitution, and is thus unconstitutional. Given

Defendant ABERCROMBIE's construction of Article I, Section 23, of the Constitution of the State of Hawai'i as merely providing that under the Hawai'i State Constitution, and only under the Hawai'i State Constitution, the Legislature has the power to reserve marriage to opposite sex couples, Defendant ABERCROMBIE denies that Article I, Section 23, violates any provision of the United States Constitution. Defendant ABERCROMBIE denies the allegations in all other respects.

105. With respect to the allegations of paragraph 105, Defendant ABERCROMBIE hereby incorporates his answers to paragraphs 1 through 104.

106. With respect to the allegations of paragraph 106, Defendant ABERCROMBIE admits HRS § 572-1, to the extent it allows opposite sex couples, but not same sex couples, to get married, violates the Due Process Clause and Equal Protection Clause of the United States Constitution. Defendant ABERCROMBIE denies the allegations in all other respects.

107. Defendant ABERCROMBIE denies the allegations of paragraph 107.

108. Any and all claims and allegations in the Complaint not heretofore expressly admitted, are hereby denied.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Some of the claims stated in the Complaint fail to state claims for which relief may be granted.

SECOND DEFENSE

Some of the claims stated in the Complaint are barred by the doctrine of sovereign immunity or Eleventh Amendment immunity.

THIRD DEFENSE

This Court lacks subject matter jurisdiction to adjudicate some of the claims stated in the Complaint. Some of the Plaintiffs may lack standing, and/or their claims are not ripe, or are otherwise non-justiciable.

FOURTH DEFENSE

Some of the claims may be barred by applicable statute of limitations, or other statutory or administrative time deadlines, or by waiver or laches.

FIFTH DEFENSE

If any claims for money damages are asserted, they are barred, in whole or in part, by absolute or qualified officer's immunity, and derivative immunity.

SIXTH DEFENSE

Defendant ABERCROMBIE should not be liable for simply carrying out and enforcing statutory law when the courts have not finally declared such laws to be unconstitutional.

SEVENTH DEFENSE

Claims for equitable relief (e.g., injunctive relief) should be denied as a matter of this Court's equitable discretion, and because it is unnecessary.

EIGHTH DEFENSE


Special circumstances render any award of attorney's fees to Plaintiffs unjust.

WHEREFORE, Defendant ABERCROMBIE respectfully requests that this Court:

1. Declare, if Plaintiffs satisfy jurisdiction and justiciability requirements, that the restriction of the right to marry to opposite sex couples under HRS § 572-1 violates the Due Process Clause and Equal Protection Clause of the United States Constitution.
2. Deny Plaintiffs' other requests for relief.
3. Grant Defendant ABERCROMBIE such other relief in law or in equity as this Court deems just and proper.

DATED: Honolulu, Hawai'i, February 21, 2012.

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HARVEY E. HENDERSON, JR.
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Deputy Attorneys General

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Neil S. Abercrombie, Governor,
State of Hawai'i

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

NATASHA N. JACKSON, JANIN
KLEID, and GARY BRADLEY,

Plaintiffs,

vs.

NEIL S. ABERCROMBIE, Governor,
State of Hawai'i, and LORETTA J.
FUDDY, Director of Health, State of
Hawai'i,

Defendants.

CIVIL NO. CV11-00734 ACK/KSC

(CONSTITUTIONALITY OF
STATE STATUTE)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was mailed first-class, postage-prepaid by the last mail pick-up of the day to the following person(s) as addressed below:


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Loretta J. Fuddy, Director of Health, State of Hawai'i

DATED: Honolulu, Hawai'i, February 21, 2012.



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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 21 2012

at 11 o'clock and 46 min. M.
SUE BEITIA, CLERK

Attorneys for Loretta J. Fuddy,
Director of Health, State of Hawai'i

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FOR THE DISTRICT OF HAWAII

NATASHA N. JACKSON, JANIN
KLEID, and GARY BRADLEY,

Plaintiffs,

vs.

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State of Hawai'i, and LORETTA
J. FUDDY, Director of Health,
State of Hawai'i,

Defendants.

CIVIL NO. 11-00734 ACK KSC

(CONSTITUTIONALITY OF STATE
STATUTE)

LORETTA J. FUDDY, DIRECTOR OF
HEALTH, STATE OF HAWAII'S
ANSWER TO FIRST AMENDED
COMPLAINT

CERTIFICATE OF SERVICE

LORETTA J. FUDDY, DIRECTOR OF HEALTH, STATE OF HAWAII'S
ANSWER TO FIRST AMENDED COMPLAINT

FIRST DEFENSE

The complaint fails to state a claim upon which relief can
be granted.

SECOND DEFENSE

1. LORETTA J. FUDDY, Director of Health, State of Hawai'i ("Fuddy") is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraphs 1 - 4 of the first amended complaint.

2. Fuddy admits the allegations in paragraph 5 of the first amended complaint.

3. For answer to paragraph 6 of the first amended complaint, Fuddy admits that she is sued in her capacity as the Director of the Department of Health. The authority, responsibilities, and duties of that office are as stated in Hawai'i law.

4. Fuddy denies the allegations in paragraph 7 of the first amended complaint.

5. Fuddy is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraphs 8 and 9 of the first amended complaint.

6. For answer to paragraph 10 of the first amended complaint, Fuddy admits that Bradley and his male partner cannot be issued a marriage license by the State under existing Hawai'i law.

7. Fuddy denies the allegations in paragraphs 11 and 12 of the first amended complaint.

8. For answer to paragraph 13 of the first amended complaint, Fuddy admits that to the extent the court has jurisdiction, venue is proper.

9. For answer to paragraph 14 of the first amended complaint,

Fuddy admits that persons who are lesbian or gay have been the subject of discrimination by private actors and have been denied State recognition of marriage to each other. Fuddy is without knowledge or information sufficient to form a belief as to the truth and accuracy of the remaining allegations in the paragraph.

10. Fuddy is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraph 15 of the first amended complaint.

11. For answer to the allegations in paragraphs 16 - 33 of the first amended complaint, Fuddy states that the proceedings in Baehr v. Lewin speak for themselves and denies that the proceedings are fully or accurately summarized in the first amended complaint. The provisions of the "Reciprocal Beneficiaries Act" and the "marriage amendment" speak for themselves.

12. Fuddy neither admits nor denies the allegations in paragraph 34 of the first amended complaint because they are statements of opinion rather than statements of fact or law.

13. For answer to paragraph 35 of the first amended complaint, Fuddy admits that post-Baehr v. Miike some jurisdictions have allowed same sex couples to marry.

14. For answer to paragraphs 36 - 38 of the first amended complaint, Fuddy states that the laws of the referenced

jurisdictions speak for themselves.

15. Fuddy is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraph 39 of the first amended complaint.

16. For answer to paragraphs 40 - 53 of the first amended complaint, Fuddy states that the proceedings in the referenced cases speak for themselves.

17. Fuddy is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraph 54 of the first amended complaint.

18. Fuddy denies the allegations in paragraph 55 of the first amended complaint.

19. For answer to paragraph 56 of the first amended complaint, Fuddy admits that a civil unions law was enacted and became effective on January 1, 2012.

20. Fuddy denies the allegations in paragraphs 57 and 58 of the first amended complaint.

21. For answer to paragraph 59 of the first amended complaint, Fuddy admits that denial of State recognition of same sex marriage does not violate the Hawai'i State Constitution.

22. Fuddy denies the allegations in paragraph 60 of the first amended complaint.

23. Fuddy is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations

in paragraphs 61 - 67 of the first amended complaint.

24. Fuddy denies the allegations in paragraphs 68 and 69 of the first amended complaint.

25. For answer to paragraphs 70 and 71 of the first amended complaint, Fuddy states that the provisions of the civil unions law speak for themselves.

26. Fuddy is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraph 72 of the first amended complaint.

27. Fuddy denies the allegations in paragraphs 73 and 74 of the first amended complaint.

28. For answer to paragraph 75 of the first amended complaint, Fuddy states that the provisions of the civil unions law speak for themselves.

29. Fuddy neither admits nor denies the allegations in paragraph 76 and 77 of the first amended complaint because they are statements of opinion rather than statements of fact or law.

30. Fuddy denies the allegations in paragraph 78 of the first amended complaint.

31. Fuddy is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraphs 79 - 84 of the first amended complaint.

32. For answer to paragraphs 85 and 86 of the first amended complaint, Fuddy states that the referenced documents

Speak for themselves.

33. Fuddy is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraphs 87 - 89 of the first amended complaint.

34. For answer to paragraphs 90 - 93, Fuddy states that referenced constitutional provisions and law speak for themselves.

35. For answer to paragraph 94 of the first amended complaint, Fuddy incorporates her responses to the referenced paragraphs.

36. For answer to paragraph 95 of the first amended complaint, Fuddy denies that plaintiffs have a fundamental right to have their relationship recognized as a marriage by the State. The cases referenced in the paragraph speak for themselves.

37. Fuddy denies the allegations in paragraphs 96 - 99 of the first amended complaint.

38. For answer to paragraph 100 of the first amended complaint, Fuddy incorporates her responses to the referenced paragraphs.

39. For answer to paragraphs 101 and 102 of the first amended complaint, Fuddy states that the provisions of the referenced law speak for themselves.

40. Fuddy denies the allegations in paragraphs 103 and 104

of the first amended complaint.

41. For answer to paragraph 105 of the first amended complaint, Fuddy incorporates her responses to the referenced paragraphs.

42. Fuddy denies the allegations in paragraphs 106 and 107 of the first amended complaint.

43. Fuddy denies any allegations not specifically addressed above.

THIRD DEFENSE

Plaintiffs' claims are barred by sovereign immunity, qualified immunity, the 11th Amendment to the United States Constitution, and "our federalism."

FOURTH DEFENSE

The matters alleged are not suitable for declaratory relief because there is no actual controversy.

FIFTH DEFENSE

This court lacks subject matter jurisdiction over the matters alleged.

SIXTH DEFENSE

Plaintiffs lack standing.

SEVENTH DEFENSE

Plaintiffs' claims are not ripe, present a political question, or are otherwise not justiciable.

WHEREFORE, Fuddy requests that the complaint be dismissed with prejudice and that she be awarded costs and such other relief as this court deems appropriate.

DATED: Honolulu, Hawai'i, February 21, 2012.

DAVID M. LOUIE
Attorney General
State of Hawai'i

WILLIAM J. WYNHOFF
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Deputy Attorneys General

Attorneys for Loretta J.
Fuddy, Director of
the Department of Health,
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CIVIL NO. 11-00734 ACK KSC

(CONSTITUTIONALITY OF STATE
STATUTE)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was
duly served on the following persons by U.S. mail at the address
shown by mail on February 21, 2012:

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DATED: Honolulu, Hawai'i, February 21, 2012.



WILLIAM J. WYNHOFF
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State of Hawai'i